



**INDIANA COURT OF APPEALS
CASE AT A GLANCE
SHERMAN MINTON INN OF COURT, JEFFERSONVILLE**

CRIMINAL LAW

Suppression of Evidence

If a police officer is sent to a business to investigate an anonymous tip and upon his arrival an unknown individual sitting in the parking lot stands up, walks quickly into the business despite the officer's request that he stop to talk, proceeds to the back wall of the business, and then "manipulates" something in the front pocket of his bib overalls, does the officer have reasonable suspicion to stop and pat down the individual for officer safety?

CASE SYNOPSIS

*Greeno v.
State*

**Facts and Procedural
History**

On August 7, 2004, Indianapolis Police Officer Mark Spears was dispatched to a business known as Contractors Plus because "apparently there was [an] anonymous female caller stating that a man by the name of John Gregory was at that location in possession and using the drug Oxycontin." As Officer Spears pulled into the parking lot, he saw an unknown man, later identified as Greeno, sitting outside on a roll of carpet.

When Greeno saw the police car, he stood up and walked quickly toward the building. From approximately twenty yards away, Officer Spears yelled for Greeno to "stop because I just wanted to ask the man if he was John Gregory and that I was there on an investigation." Greeno kept going, and Officer Spears "began a quick pace jog towards him." Greeno entered the building through an open two-car

garage door and went "to the back wall area of the business."

Officer Spears was initially unable to enter the building because a rottweiler was growling and barking at him. Officer Spears "hollered for [a woman he saw] to come and get the dog." Officer Spears could "see [Greeno] and he was putting his, he had like bib overalls with a leather jacket and I could see him making a motion." Greeno, who was wearing a leather jacket indicating membership in the "Son's [sic] of Silence motorcycle club gang," had his back to Officer Spears and he was "manipulating something, he's doing manipulations like this and his back is to me so I didn't know what, what he was doing with this, what I was thinking was he is either going to pull something out, he's either trying to hide something, there is something right here and it cause[d] me some concern uh for what he was doing."

When two other men appeared in the warehouse, Officer Spears became concerned for his

**Appeal
from:
Marion
Superior Court**

**The Honorable
Israel Cruz,
Judge**

**Oral
Argument:
November 30,
2006
5:00 p.m. –
5:40 p.m.
20 minutes
each side**

*Greeno v. State***Case Synopsis (continued)**

safety, and rather than walk over to Greeno, Officer Spears yelled for Greeno to come back to him. Greeno refused, so Officer Spears approached Greeno, who was “very nervous, panicky.” Officer Spears conducted a pat down of Greeno’s bib overalls and felt “a hard object” that he thought could be “possibly a folding blade knife, it had the consistency of just a hard object, just consistent with possibly a knife.” Officer Spears retrieved the item from the overalls, and it was “a clear yellow unmarked pill bottle . . . it had a number of pills and white substance in it.”

The State charged Greeno with possession of methamphetamine as a Class C felony and two counts of possession of a controlled substance as Class D felonies. Greeno filed a motion to suppress the drugs seized from him. After a hearing at which only Officer Spears testified, the court denied Greeno’s motion. Greeno petitioned for reconsideration, which the court denied. The trial court certified the issue for interlocutory appeal, and the Court of Appeals accepted jurisdiction.

Parties’ Arguments

Greeno claims the trial court should have granted his motion to suppress the drugs Officer Spears found in Greeno’s pocket because Officer Spears’ search violated Greeno’s right, under the Fourth Amendment to the United States Constitution, to be free from unreasonable searches and seizures. The State has the burden of demonstrating Officer Spears’ search of Greeno was proper.

The State first asserts the facts of this case are similar to those in *Terry v. Ohio*, 392 U.S. 1 (1968), and justify a finding of reasonable suspicion to search Greeno. In *Terry*, an officer in plain clothes was patrolling for pickpockets and shoplifters on the streets of downtown Cleveland at 2:30 one afternoon when he noticed two men, Terry and Chilton, standing on a street corner. One of the men stood at the corner while the other walked past some stores, paused to look in a store window, walked a little further, turned around to go back to the original corner, and paused to look in the same store window on the way. When he returned to the corner, the two men conferred, and then the second man walked the same route the first had, stopping twice to look in the same store window. The two men repeated this activity five or six times, for in total nearly a dozen trips down the street. Based on his experience, the officer believed the men were “casing a job, a stick-up.” *Id.* at 6. The officer approached the men and asked for their names. When the men mumbled in response, he patted down the outside of Terry’s clothing and felt a gun. A pat-down also revealed a handgun on Chilton.

Based on those facts, the U.S. Supreme Court reiterated the Fourth Amendment requires an officer intruding on a citizen’s right to be free from unreasonable search and seizure “be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” We must judge from an objective position whether “the

Case Synopsis (continued)

facts available to the officer at the moment of the seizure or the search [would] 'warrant a man of reasonable caution in the belief' that the action taken was appropriate." *Id.* at 21-22. The officer's suspicion must be based on more than inarticulate hunches.

Greeno notes Officer Spears' arrival at the business was prompted by an anonymous telephone call that displayed no independent indicia of reliability, such that the telephone call provided no reasonable suspicion to stop Greeno. Neither, argues Greeno, could the fact he walked away upon seeing Officer Spears provide reasonable suspicion to stop him. According to Officer Spears' own admission at the hearing, Greeno had committed no felony or misdemeanor in Officer Spears' presence. Therefore, Greeno asserts, we should hold the Fourth Amendment prohibited Officer Spears from stopping Greeno and, because the stop was improper, also prohibited Officer Spears from searching him.

Regarding the search, the State claims that once Officer Spears properly stopped Greeno, he could conduct a

pat down search of Greeno for officer safety. In *Terry*, the Supreme Court described the purpose and limits of such a search:

Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

392 U.S. at 30.

**Opinion in this case expected:**

By the end of the Calendar Year

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

Or contact:

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PANEL OF JUDGES

Hon. James S. Kirsch (Marion County), Presiding

- Judge of the Court of Appeals since March 1994
- Chief Judge of the Court since March 2004

James S. Kirsch was appointed to the Court of Appeals in March 1994 and was elected Chief Judge in March 2004. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J. D., cum laude, 1974) and Butler University (B.A. with honors, 1968). He served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm.

Since 1990, Chief Judge Kirsch has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University. Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and a former member of the Board of Visitors of the Indiana University School of Law-Indianapolis.

Judge Kirsch is a past-president of the United Way/Community Service Council Board of Directors and a current or former member of the Board of Directors of the United Way of Central Indiana, the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association.

Judge Kirsch is also a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation. He is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch and his wife Jan have two children, Adam, a senior at Wabash College, and Alexandra, a senior at Cathedral High School. Chief Judge Kirsch was retained on the Court in 1996 and 2006.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

Today's oral argument is the 173rd case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

PANEL OF JUDGES

Hon. John G. Baker **(Monroe County)**

- Judge of the Court of Appeals since June 1989

John G. Baker is originally from Aurora in Dearborn County and now resides in Boone County. Previously he lived in Monroe County for 35 years. For the past 17 years, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

For 27 years Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and for three years the School of Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989. Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, the Judge has been active in Boy Scouts of America since his youth.

Judge Baker, who was retained on the Court by election in 1992 and 2002, lives near Zionsville with his wife, Margaret (Peggy) Paul Baker. He has three adult sons.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



PANEL OF JUDGES

Hon. Melissa S. May (Vanderburgh County)

- Judge of the Court of Appeals since April 1998

Melissa S. May was appointed to the Court of Appeals in April of 1998. Judge May was born in Elkhart, Indiana. She graduated from Indiana University-South Bend with a B.S. in 1980 and from Indiana University School of Law-Indianapolis with a J.D. in 1984.

Between law school and her appointment to the Court, Judge May practiced law in Evansville, Indiana, focusing on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, and as co-chair of the Futures Taskforce. In addition, she was a member of the Board of Directors of the Indiana Continuing Legal Education Forum from 1994-1999 and has been the co-chair of ICLEF's Indiana

Trial Advocacy College from 2001 to 2005. She is a fellow of the Indiana Bar Foundation, as well as for the American Bar Association, and she is a Master Fellow of the Indianapolis Bar Association.

From 1999 till December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission. In 2003, Judge May was named to the American Bar Association's Standing Committee on Attorney Specialization. She is now special counsel to that committee.

In the spring of 2004, Judge May became adjunct faculty at Indiana University School of Law-Indianapolis, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana. Judge May was retained on the Court of Appeals by election in 2000.



ATTORNEYS FOR THE PARTIES

For Appellant, Bobby Greeno:
Joseph M. Cleary
Hammerle Allen & Cleary
Indianapolis

Joseph Cleary graduated from the University of Notre Dame in 1985 and earned his law degree from Indiana University-Bloomington in 1988, the year he also passed the Indiana bar. After graduation, he went to work at the Office of the State Public Defender and soon began doing capital post-conviction work. During his tenure with the State Public Defender, Mr. Cleary was successful in gaining relief for several individuals on death row, including Gregory VanCleave, Phillip McCollum and William Spranger, who all eventually received sentences less than death.

In 1995 Mr. Cleary entered into private practice with Robert W. Hammerle. A good portion of his practice involves post-trial work, including appeals, post-conviction, and federal habeas. Mr. Cleary received the Gideon Award from the Indiana Public Defender Council in 2001 for zealous advocacy of indigent criminal defendants. In large part that award stemmed from his representation of Jerry Watkins, who was convicted in 1986 for murder and sentenced to 60 years in prison. In 2000, federal district judge David F. Hamilton granted Mr. Watkins' writ of habeas corpus and found him to be innocent. Eventually, all charges were dismissed against him.

Mr. Cleary's wife Kathleen, also with the State Public Defender, is in her 18th year representing clients on death row seeking post-conviction relief. They have two children, Allison (age 11) and Daniel (age 8).



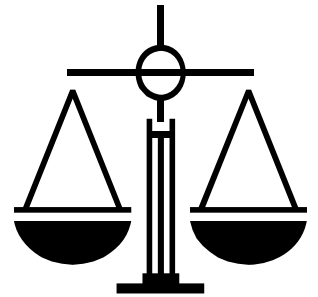
ATTORNEYS FOR THE PARTIES

For Appellee, State of Indiana:
J.T. Whitehead
Deputy Attorney General
Indianapolis

J.T. Whitehead graduated *magna cum laude* from Wabash College in 1987 with majors in English and Philosophy and a minor in Political Science. He earned a Master of Arts degree in Philosophy from Purdue University in 1993, and took his J.D. from Indiana University School of Law in 1997. Prior to this, he worked on a grounds crew, as a short order cook, video store manager, book shop clerk, and delivery man, all of which inspired his four years as counsel at the Indiana Department of Labor.

He has served twice as a Deputy Attorney General, both times with Appeals, first from 1998 to 2000, and again from January 2005 to the present. He orally argued (but did not brief) *Kenner v. State*, 703 N.E.2d 1122 (Ind. Ct. App. 1999), and helped brief (but did not argue) *St. Vincent's Hospital v. Robert Steele*, 766 N.E.2d 699 (Ind. 2002), the civil case on which he is most proud to have worked.

Mr. Whitehead writes creatively in his free time; his poems, short stories and essays have appeared in over forty small press publications, and he has published 65 poems.



AMICUS BRIEFS

A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.

- There are no amicus filings in this case.